IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR.

ORDER

Rahim Vs. State

SB CRIMINAL REVISION PETITION NO.560/2006.

Date of Order: 18 August, 2006.

PRESENT
HON'BLE MR.JUSTICE HARBANS LAL

Mr. J.S. Tanwar for the petitioner.
Mr. Arun Sharma PP for the State.

BY THE COURT:-

This revision petition has been filed by petitioner-accused Rahim under Section 397/401 Cr.P.C. against the judgment and order dated 31.3.2006 passed by the learned Special Judge, SC/ST (Prevention of Atrocities) Cases, Jaipur in Criminal Appeal No.13/2006 whereby the appeal has been dismissed and the judgment and order dated 25.1.2006 passed by the learned Addl. Civil Judge (Junior Division) cum Judicial Magistrate, First Class No.8, Jaipur city, Jaipur in Criminal Case No.247/2004 has been up-held.

Briefly stated, the relevant facts giving rise to this revision and necessary for its disposal are that complainant Mohd. Israel lodged an FIR No. 37/2004 at P.S. Galta Gate, Jaipur on 31.1.2004 for the offences under Sections 457 and 380 IPC where-upon after investigation charge-sheet was filed against the petitioner and Haseen for the aforesaid offences. After due trial, the trial court acquitted co-accused

Haseen of the charges for the offences under Sections 457 and 380 IPC but convicted him for the offence under Section 411 IPC. But he was released on probation under Section 4 of the Probation of Offenders Act, 1958. The petitioner was, however, convicted for the offences under Sections 457 and 380 IPC vide the same judgment. The appeal filed by him was also dismissed as indicated above. Hence, the petitioner has invoked the revisional jurisdiction of this court.

I have heard learned counsel for the petitioner-accused and learned Public Prosecutor for the State and have perused the judgment dated 25.1.2006 of the learned trial court and impugned judgment dated 31.3.2006 passed by the learned Special Judge, SC/ST (Prevention of Atrocities) Cases, Jaipur.

Learned counsel for the accused-petitioner has contended which has not been controverted that there is no eye witness in this case nor there is any other direct evidence of house breaking by night and committing theft from the locked room of the complainant. He has further submitted that the trial court has on the very same evidence drawn presumption under Section 114 of the Indian Evidence Act, 1872 that the accused-petitioner committed house breaking and theft from the room of the complainant whereas on similar and identical evidence and facts co-accused Haseen has been acquitted of the charges for the offences under Sections 457 and 380 IPC and has been convicted only for the offence under Section 411 IPC drawing similar presumption against him on the basis of the evidence of recovery of the stolen property. He

has pointed out that both the accused-persons were arrested on the same day i.e. 1.2.2004 and both of them made discovery statements under Section 27 of the Indian Evidence Act, 1872 on the same day i.e. 2.2.2004 at 4.00 p.m. and the recovery of the stolen property was effected at their instance on the same day in the evening. He has, therefore, urged that the presumption of house breaking and theft could either be drawn against both the accused persons or could not have been drawn against any one of them. Learned PP also could not controvert these facts.

I have considered the respective contentions in the light of the evidence on record.

From the evidence on record it is very well established that co-accused Haseen was a tenant in the house of the complainant. The stolen property was lying in one of the rooms of the house which was duly fastened and locked. It also cannot be disputed that the theft was committed after breaking upon the door of the said room. From the statements of the witnesses namely; Mohd. Israel PW-1, Yunus Ali PW-3, the Investigating Officer, Imtiyaz PW-4, arrest memos Ex.P-4 (Haseen) and Ex.P-5 (Raheem), discovery statements of petitioner Rahim Ex.P-11 and co-accused Haseen Ex.P-12, recovery memos Ex.P-6 (Raheem) and Ex.P-8 (Haseen) and site plans of the place where-from the recoveries were made Ex.P-9 (Raheem) and Ex.P-7 (Haseen) have been duly proved on the basis of the oral evidence as well as the aforesaid documents.

Learned trial court as well as learned appellate court have recorded a concurrent finding that the stolen articles have been recovered from the

exclusive possession of the accused-petitioner as well as co-accused Haseen. Learned trial court has, however, acquitted co-accused Haseen of the charges under Sections 457 and 380 IPC and has convicted him only for the offence under Section 411 IPC as indicated above. On a thorough examination and scrutiny of the evidence on record, there appears to be sufficient merit and substance in the contention of the learned counsel that the trial court has taken contradictory view in the cases of two similarly situated accused persons. Indeed, the evidence on record against both the accused tried together in this case is similar and identical. There is absolutely no distinguishing feature in their cases. Both the accused were arrested on 1.2.2004. Both of them made discovery statements under Section 27 of the Indian Evidence Act, 1872 on 2.2.2004 at 4.00 p.m. and recoveries of stolen articles were also made at their instance on the same day i.e. 2.2.2004 in the evening. There is no evidence on record to show that the house breaking and theft were committed by night. Co-accused Haseen is proved to be a tenant in the same house of the complainant. The possibility of the house breaking and theft during the day cannot be wholly ruled out. Therefore, the charges for the offences under Sections 457 and 380 IPC cannot be held to be proved beyond all manner of doubt against the accused-petitioner. So, he also deserves to be acquitted of these charges. At best similar presumption as has been drawn against co-accused Haseen under Section 411(a) IPC that he received stolen articles knowing them to be stolen deserves to be drawn against him and he also deserves

to be convicted for the offence under Section 411 IPC only.

In the result, accused-petitioner Raheem s/o Abdul Latif is acquitted of the charges for the offences under Sections 457 and 380 IPC giving him the benefit of doubt, but he is convicted for the offence under Section 411 IPC.

He has already undergone sentence for about 10 months. There is no previous conviction to his credit. The value of the stolen articles recovered at his instance is also not huge and similarly situated co-accused Haseen has been released on probation by the trial court. Thus, having regard to the totality of the facts and circumstances of the case and the aforesaid facts, the petitioner also deserves the same treatment.

It is, therefore, directed that accused-petitioner Reheem shall be released on probation under Section 4 of the Probation of Offenders Act, 1958 on his furnishing a personal bond in the sum of Rs.1,000/- with the surety in the like amount to the satisfaction of the trial court with the stipulation that he shall maintain peace and be of good behaviour for a period of one year and shall appear before the court during the aforesaid period to receive and undergo sentence as and when called and shall not indulge again in any such offence in future.

The revision petition is disposed of accordingly.

(HARBANS LAL)J.